

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Bishop Perry Middle School	)	File Nos. SLD-487170, <i>et al.</i>
New Orleans, LA, <i>et al.</i>	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

**ORDER**

**Adopted: May 2, 2006**

**Released: May 19, 2006**

By the Commission: Commissioner Copps issuing a separate statement.

**I. INTRODUCTION**

1. In this Order, we grant 196 appeals of decisions by the Universal Service Administrative Company (USAC) concerning the schools and libraries universal service support mechanism (also known as the E-rate program) denying funding due to certain clerical or ministerial errors in the application, *i.e.*, a failure to timely file an FCC Form 471, a failure to timely file a certification related to an FCC Form 470, or a failure to comply with minimum processing standards.<sup>1</sup> As explained below, we find that special circumstances exist to justify a waiver of the Commission's rules, and, accordingly, we grant these appeals and remand the underlying applications associated with these appeals to USAC for further action consistent with this Order. To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of each application listed in the Appendices, and issue an award or a denial based on a complete review and analysis, no later than 60 days from release of this Order. In addition, we direct USAC to provide all future and pending applicants with a 15-day opportunity to cure any ministerial or clerical errors on their FCC Form 470, FCC Form 471, or associated certifications. We also direct USAC to develop targeted outreach procedures designed to better inform applicants of application procedures.

2. As we recently noted, many E-rate program beneficiaries, particularly small entities, contend that the application process is complicated, resulting in a significant number of applications for E-rate support being denied for ministerial, clerical or procedural errors.<sup>2</sup> We find that the actions we

<sup>1</sup> In this Order, we use the term "appeals" to generically refer to requests for review of decisions, or waivers related to such decisions, issued by the Commission, the Wireline Competition Bureau, or the Administrator. A list of these pleadings is attached as Appendices A-C. One of the appeals is a petition for reconsideration of a Commission order filed by the Information Technology Department of the State of North Dakota.

<sup>2</sup> *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Linkup, Changes to the Board of Directors of the National Exchange Carrier*

take here to provide relief from these types of errors in the application process will promote the statutory requirements of section 254(h) of the Communications Act of 1934, as amended (the Act), by helping to ensure that eligible schools and libraries actually obtain access to discounted telecommunications and information services.<sup>3</sup> In particular, we believe that by directing USAC to modify certain application processing procedures and granting a limited waiver of our application filing rules, we will provide for a more effective application processing system that will ensure eligible schools and libraries will be able to realize the intended benefits of the E-rate program as we consider additional steps to reform and improve the E-rate program.<sup>4</sup> Requiring USAC to take these additional steps will not reduce or eliminate any application review procedures or lessen the program requirements that applicants must comply with to receive funding. Indeed, we retain our commitment to detecting and deterring potential instances of waste, fraud, and abuse by ensuring that USAC continues to scrutinize applications and takes steps to educate applicants in a manner that fosters program participation. We also emphasize that our actions taken in this Order should have minimal effect on the overall federal Universal Service Fund (USF or the Fund), because the monies needed to fund these appeals have already been collected and held in reserve.<sup>5</sup>

## II. BACKGROUND

3. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections. The E-rate application process generally begins with a technology assessment and a technology plan.<sup>6</sup> After developing the technology plan, the applicant must file the FCC Form 470 (FCC Form 470) to request discounted services such as tariffed telecommunications services, month-to-month Internet access, cellular services, or paging services, and any services for which the applicant is seeking a new contract.<sup>7</sup> The FCC Form 470 must be posted on USAC's schools and libraries division website for at least 28 days.<sup>8</sup> The applicant must then comply with the Commission's competitive

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*Association, Inc.*, WC Docket Nos. 05-195, 02-60, 03-109, CC Docket Nos. 96-45, 02-6, 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005) (*Comprehensive Review NPRM*).

<sup>3</sup> 47 U.S.C. § 254(h). The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, amended the Communications Act of 1934.

<sup>4</sup> *Comprehensive Review NPRM*, 20 FCC Rcd at 11324-25, paras. 37-40 (seeking comment on the application process and competitive bidding requirements for the schools and libraries program).

<sup>5</sup> We estimate that the appeals granted in this Order involve applications for approximately \$68 million in funding for Funding Years 1999-2005. We note that USAC has already reserved approximately \$585 million to fund outstanding appeals. See, e.g., Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter 2005, dated August 2, 2005. Thus, we determine that the action we take today should have minimal effect on the USF as a whole.

<sup>6</sup> 47 U.S.C. § 254(h)(1)(B); 47 C.F.R. § 54.504. Applicants seeking discounts only for telecommunications services do not need to develop a technology plan. See *Request for Review of the Decision of the Universal Service Administrator by United Talmudical Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 96-45, 97-21, Order, 16 FCC Rcd 18812, 18816, para. 11 (2001). In August, 2004, the Commission revised its rules concerning technology plans. See *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15826-30, paras. 51-63. See *Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order, 19 FCC Rcd 15808, 15826-30, paras. 51-63 (2004) (*Schools and Libraries Fifth Report and Order*).

<sup>7</sup> If the technology plan has not been approved when the applicant files the Form 470, the applicant must certify that it understands that the technology plan must be approved prior to commencement of service. 47 C.F.R. § 54.504(b)(2)(vii).

<sup>8</sup> 47 C.F.R. § 54.504(b)(4).

bidding requirements set forth in sections 54.504 and 54.511(a) of the Commission's rules.<sup>9</sup> The applicant then files the FCC Form 471 (FCC Form 471), after entering into agreements for eligible services.<sup>10</sup> Section 54.507 of the Commission's rules states that fund discounts will be available on a first-come-first-served basis.<sup>11</sup> Under the Commission's rules, USAC implements an initial filing period, or filing window, for the FCC Form 471 applications that treats all schools and libraries filings within that period as if their applications were simultaneously received.<sup>12</sup>

4. The Commission has vested in USAC the responsibility of administering the application process for the schools and libraries universal service support mechanism.<sup>13</sup> Pursuant to this authority, USAC has established procedures, including "minimum processing standards," to facilitate its efficient review of the thousands of applications requesting funding that it receives.<sup>14</sup> These minimum processing standards are designed to require an applicant to provide at least the minimum data necessary for USAC to initiate review of the application under statutory requirements and Commission rules. When an applicant submits an FCC Form 470 or FCC Form 471 application that omits information required by the minimum processing standards, USAC automatically returns the application to the applicant without considering it for discounts under the program, without inquiring into the cause of the omission or without providing the applicant with the opportunity to cure the error.<sup>15</sup> For example, if an applicant failed to answer all blocks 1-6 on the FCC Form 471 or failed to submit a properly signed signature certification, the applicant's FCC Form 471 would be rejected and returned to the applicant, without further consideration.<sup>16</sup>

5. The Commission has under consideration various appeals filed by parties that have requested funding for discounted services under the schools and libraries universal service support mechanism.<sup>17</sup> The petitioners request review of decisions, or waivers related to such decisions, issued by

<sup>9</sup> 47 C.F.R. §§ 54.504, 54.511(a).

<sup>10</sup> This form is to request discounts on those services and it contains the discount calculation worksheet and the discount funding request. The FCC Form 471 must be filed each time a school or library orders telecommunications services, Internet access, or internal connections.

<sup>11</sup> 47 C.F.R. §§ 54.507(c).

<sup>12</sup> 47 C.F.R. §§ 54.507(c).

<sup>13</sup> *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21 and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058 (1998).

<sup>14</sup> See, e.g., Instructions for Completing the Universal Service Schools and Libraries Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (December 2002) (FCC Form 471 Instructions) at 6-9.

<sup>15</sup> See, e.g., USAC website, Form 471 Minimum Processing Standards and Filing Requirements for FY 4, <http://www.sl.universalservice.org/reference/471mps.asp> (Minimum Processing Standards).

<sup>16</sup> *Id.* But note, in the *Naperville Order*, the Commission determined that USAC should not return an application without consideration for having omitted information required by USAC's minimum processing standards where: (1) the request for information is a first-time information requirement on a revised form, thereby possibly leading to confusion on the part of the applicants; (2) the omitted information could be easily discerned by USAC through examination of other information included in the application; and (3) the application is otherwise substantially complete. *Request for Review by Naperville Community Unit School District 203, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-203343, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 5032,5037-38, paras. 12-15 (2001) (*Naperville Order*).

<sup>17</sup> See Appendices A-C.